

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

<p>CRICUT, INC., a Delaware corporation,</p> <p>Plaintiff,</p> <p>v.</p> <p>EUROPE WAREHOUSE GMBH & CO. KG f/k/a KREATIVPLOTTER GMBH & CO. KG, a German company; and TORSTEN JUNG-LENZ, an individual,</p> <p>Defendants.</p>	<p>MEMORANDUM DECISION AND ORDER STRIKING SECOND AMENDED COMPLAINT</p> <p>Case No. 2:24-cv-00505</p> <p>Judge Tena Campbell</p>
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Before the court is a motion to dismiss filed by Defendant Torsten Jung-Lenz. (ECF No. 35.) Plaintiff Cricut, Inc. (Cricut) has filed a response to that motion (ECF No. 38), as well as a Second Amended Complaint (ECF No. 37). Cricut argues that the motion to dismiss is moot now that it has filed an amended complaint.

Ordinarily, the court would agree. See, e.g., Brown v. Newey, No. 1:21-cv-154, 2022 WL 22287017, at *1 (D. Utah Aug. 2, 2022) (holding that a pending motion to dismiss was moot after the filing of an amended complaint because “[i]t is well-established that an ‘amended complaint supersedes the original complaint and renders the original complaint of no legal effect’” (quoting Franklin v. Kan. Dep’t of Corr., 160 F. App’x 730, 734 (10th Cir. 2005))). But Cricut has already filed an amended complaint. (See Am. Compl., ECF No. 9.) And the Federal Rules of Civil Procedure only allow a plaintiff to amend the complaint once as a matter of course. See Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2).

Because Mr. Jung-Lenz did not consent and Cricut did not move for leave to file its Second Amended Complaint, the court strikes that pleading. The court notes that it is inclined to grant a motion for leave to amend the complaint because litigation is still in its early stages and the amended pleading may remedy the legal issues that Mr. Jung-Lenz cites in his motion to dismiss. See id. (“The court should freely give leave when justice so requires.”). But the court will first allow full briefing from the parties on any such motion. Alternatively, to avoid delay, the parties may stipulate to the filing of the Second Amended Complaint. The court will then deny the pending motion to dismiss as moot, without prejudice to any new motion to dismiss that Mr. Jung-Lenz wishes to file based on the allegations in the Second Amended Complaint.

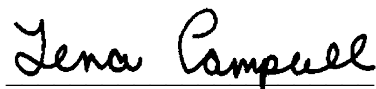
ORDER

For the foregoing reasons, the court ORDERS as follows:

1. The court STRIKES the Second Amended Complaint. (ECF No. 37.)
2. Cricut must file any motion for leave to amend its complaint within 14 days from the date of this order. Alternatively, if Mr. Jung-Lenz does not object and the parties so stipulate, Cricut may refile its Second Amended Complaint within 14 days from the date of this order.

DATED this 17th day of March, 2025.

BY THE COURT:

A handwritten signature in black ink, reading "Tena Campbell". The signature is written in a cursive, flowing style.

Tena Campbell
United States District Judge